



Doc Code: AP.PRE.REQ

PTO/SB/33 (01-09)

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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

HOE-793

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on February 5, 2009Signature Typed or printed name Denise Pastor

Application Number

10/754,460

Filed

January 9, 2004

First Named Inventor

Martin Schock

Art Unit

1792

Examiner

J. Riggleman

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐

applicant/inventor.

☐

assignee of record of the entire interest.

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

☒

attorney or agent of record.

Registration number 37,886☐

attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 _____



Signature

Douglas M. McAllister

Typed or printed name

203-459-0200

Telephone number

February 5, 2009

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☒*Total of 1 forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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In re Application of: **Martin Schock**
Application No.: **10/754,460**
Filed: **January 9, 2004**
For: **A DEVICE INCORPORATING A CHAMBER THROUGH WHICH FLUID
IS ADAPTED TO FLOW AND THE USE OF A DRAWER GUIDE IN
SUCH A DEVICE**

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Art Unit: **1792**
Examiner: **J. Riggleman**

Sir:

Transmitted herewith is:

- ☒ [X] A check in the amount of \$540 (Notice of Appeal Fee);
- ☒ [X] PTO Form SB/31 - Notice of Appeal From the Examiner to the Board of Patent Appeals and Interferences – 1 sheet ;
- ☒ [X] Pre-Appeal Brief Request for Review – 1 sheet;
- ☒ [X] Summary of Arguments for Pre-Appeal Brief Review Conference – 5 pages;
- ☒ [X] Return receipt postage prepaid postcard;
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The Commissioner is hereby authorized to charge any deficiency in the payment of the required fee(s) or credit any overpayment to Deposit Account No. 50-0625.

Very truly yours,

Douglas M. McAllister
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Monroe, Connecticut 06468
(203) 459-0200

Attorney Docket No.: **HOE-793**



HOE-793

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
)
Martin Schock) Examiner: J. Riggleman
)
Serial No.: 10/754,460) Art Unit: 1792
)
Filed: January 9, 2004)

For: **A DEVICE INCORPORATING A CHAMBER THROUGH WHICH FLUID IS
ADAPTED TO FLOW AND THE USE OF A DRAWER GUIDE IN SUCH A DEVICE**

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

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By: _____

Derise Pastor

SUMMARY OF ARGUMENTS

FOR PRE-APPEAL BRIEF REVIEW CONFERENCE

Dear Sir:

This Summary of Arguments is being filed simultaneously with a Notice of Appeal and a Pre-Appeal Brief Request for Review in connection with the final Office Action mailed on December 5, 2009.

Background

In response to the final Office Action, Applicant's undersigned counsel conducted a telephone interview with the Examiner on December 23, 2008, which is summarized below.

Claims 41-58 are pending. The following rejections are set forth in the final Office Action:

Claims 41-58 are rejected under 35 U.S.C. §103(a) as being unpatentable over Wied (EPO 0768050) in view of Tadaharu (JP2000-254087).

Summary of December 23, 2008 Telephone Interview

On December 23, 2008, Applicant's undersigned counsel conducted a telephone interview with the Examiner to discuss the rejections under 35 U.S.C. §103(a) based on Wied and Tadaharu. Applicant's claim 41 is directed towards a method for providing a drawer guide for a drawer in a chamber through which there is a flow of fluid or gas at an elevated pressure, and specifies one guide rail that is displaceable on another guide rail and which is guided by rolling members provided with a cage (i.e., a telescoping guide rail), and the provision of fluid passage openings (holes) in at least a section of a rear cage portion of the cage for the rolling members of guide rails. Such a drawer guide may be used, for example, in a dishwasher or other chamber through which there is a flow of fluid or gas at an elevated pressure.

Applicant's undersigned counsel discussed with the Examiner that Wied does not disclose or suggest the use of telescoping guide rails in, e.g., a dishwasher or in any device with a flow of fluid or gas. It was also pointed out to the Examiner that Tadaharu discloses only a single guide rail with holes, not a telescoping guide rail. It was discussed that, since Tadaharu discloses only a single guide rail, there is no need for a cage with rolling members between telescoping guide rails, and thus no holes in such a cage. Applicant's counsel also indicated that, by combining Wied and Tadaharu, one would still not have arrived at the claimed invention since there would be no holes in the cage, only holes in the guide rails as taught by Tadaharu.

The Examiner indicated that Tadaharu teaches holes in the guide rail for allowing the passage of water in a dishwasher, and since there is a cage within the rail of Wied, it would be obvious to modify the cage or any other part of the rail with holes when used in a dishwasher. The Examiner also pointed out that it was known (or at least would have been obvious) to use telescoping guides in a dishwasher.

Several potential claim amendments for overcoming the section 103(a) rejection were discussed with the Examiner, and no agreement was reached.

Discussion of Section 103(a) Rejection

Claims 41-58 are rejected as being unpatentable over Wied in view of Tadaharu. Detailed arguments traversing this rejection were presented in the Amendment mailed on August 12, 2008 (filed August 14, 2008), which is incorporated herein and made a part hereof by reference

Applicant respectfully submits that the combination of Wied and Tadaharu does not disclose or remotely suggest the use of telescoping guide rails in a dishwasher in which a rear cage portion is provided having at least one partial section with fluid passage openings, as claimed by Applicant.

The Examiner apparently takes the position that it is known or would have been obvious to use a telescoping drawer guide in a chamber having a flow of fluid or gas, such as a dishwasher. Applicant respectfully disagrees. Applicant respectfully submits that, prior to the date of Applicant's invention, telescoping guide rails of the type used in Wied were not used in dishwashers or other chambers having a flow of fluid. In conventional dishwashers, an upper rack is provided with rollers which roll on a guide rail, and the guide rail may be slidably extendible relative to a side wall of the dishwasher. However, such an arrangement is completely different from a telescoping drawer guide which comprises a plurality of guide rails and rolling members held in a cage between two guide rails for guiding one of the guide rails in a displaceable manner on the other guide rail, as set forth in Applicant's claim 41.

Although such telescoping drawer guides are known, they have not been used in dishwashers or other devices having a flow of fluid or gas therethrough. In fact, at the time of the present invention, one skilled in the art would have been taught away from using the telescoping guide rail of Wied in, e.g., a dishwasher, since dirt and debris rinsed off of the articles being cleaned would be deposited in the cages for the rolling members and would impede movement of the rolling assembly. Only by providing fluid passage openings in the rear cage portion of a cage for the rolling members, as set forth in Applicant's claimed invention, is it possible to allow water to flow through the cage when the dishwasher is in use so that the cages for the rolling members of telescoping guide rails are kept free of dirt and debris by virtue of the flushing action achieved by the water passing through the holes.

Wied discloses a conventional drawer guide having a plurality of guide rails, a rolling member assembly for guiding one of the guide rails in a displaceable manner on another guide rail, and a cage for the rolling members comprising a rear cage portion. However, Wied does not disclose or remotely suggest any fluid passage openings on at least one partial section of the rear cage portion, as claimed by Applicants. The Examiner acknowledges this fact at page 4, paragraph 6, of the final Office Action. Further, Wied does not disclose or remotely suggest the

use of a telescoping drawer guide in a chamber having a pressurized flow of fluid or gas (e.g., a dishwasher), and it is respectfully submitted that the drawer guide of Wied is not suitable for such a purpose for the reasons set forth above.

The Examiner relies on Tadaharu as disclosing that fixed guide rails 15 and 16 are provided with fluid passages 15a and 16a. However, Tadaharu does not disclose a rolling member assembly for guiding one of the guide rails in a displaceable manner on another guide rail. In fact, Tadaharu does not disclose any rollers for rolling the dish rack along the rack rails. As a result, Tadaharu cannot be seen as disclosing or suggesting a cage for such rolling members having a rear cage portion or any fluid passage openings on at least one partial section of such a rear cage portion, as claimed by Applicant (See, e.g., the partial translation of Tadaharu provided with Applicant's Response filed on February 4, 2008, incorporated herein by reference).

In the Office Action, the Examiner indicates that "it would be obvious to modify any component of the rail/cage, etc., with holes, as taught by Tadaharu to effect cleaning by a rotary spray arm" (Office Action, page 2). Applicant's respectfully submit that it would not have been obvious to one skilled in the art to use a conventional telescopic drawer guide as disclosed in Wied in, e.g., a dishwasher. Further, Tadaharu teaches away from using a conventional telescopic drawer guide having a plurality of guide rails displaceable on other guide rails, as Tadaharu discloses using a drawer which slides or rolls on stationary guide rails, and not a telescopic drawer guide. A person of ordinary skill in the art would have learned from Tadaharu that the goal of displaceably guiding a drawer in a dishwasher can be achieved in a simple manner by means of a pair of stationary guide rails. There is no suggestion in either Wied or Tadaharu that would have lead a person of ordinary skill in the art to replace the simple guide rail arrangement of Tadaharu with the more complicated arrangement of Wied.

Even assuming *arguendo* that a person of ordinary skill in the art would have considered modifying the telescoping guide rails of Wied for use in a dishwasher by providing fluid passage openings in the guide rails as taught by Tadaharu, one skilled in the art would not have arrived at Applicant's claimed invention, since there is no teaching or motivation to be found in either reference that would have lead one of ordinary skill in the art to provide a partial section of a rear cage portion on the cage for the rolling members with fluid passage openings. Further, Wied teaches a vertically extending rear cage portion, while Tadaharu teaches through holes in a

horizontal guide rail, and the combination of such a rear cage portion and guide rail would not have lead one of ordinary skill in the art to Applicant's claimed invention. Only with hindsight impermissibly gained from Applicant's disclosure could one of ordinary skill in the art have arrived at the conclusions of the Examiner.

Accordingly, the combination of Wied and Tadaharu does not disclose or remotely suggest providing a rolling member assembly with rolling members for guiding one of the guide rails in a displaceable manner on another guide rail, and providing a rear cage portion on the cage for the rolling members, where the rear cage portion includes at least one partial section that is provided with fluid passage openings in such a manner that said liquid or gas is adapted to flow through the cage when the chamber is in use, as claimed by Applicant.

Applicant respectfully submits that the present invention would not have been obvious to one skilled in the art in view of Wied in combination with Tadaharu, or any prior art of record.

Further remarks regarding the asserted relationship between Applicant's claims and the prior art are not deemed necessary, in view of the foregoing discussion. Applicant's silence as to any of the Examiner's comments is not indicative of an acquiescence to the grounds of rejection.

Withdrawal of the rejections under 35 U.S.C. § 103(a) is therefore respectfully requested.

Conclusion

Reconsideration and allowance of this application at a Pre-Appeal Brief Review conference is respectfully requested. If there are any remaining issues that need to be addressed in order to place this application into condition for allowance, the Examiner is requested to telephone Applicants' undersigned attorney.

Respectfully submitted,



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Date: February 5, 2009